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No. 84-1287

In The

Supreme Court of the United States

October Term, 1984

LOUIS LIPHETE, et al.,

Petitioners,

vs.

MERRITT STIERHEIM, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Third District Court Of Appeal Of Florida

BRIEF OF RESPONDENTS MERRITT STIERHEIM, AS COUNTY MANAGER FOR DADE COUNTY, FLORIDA, AND FRANKLIN B. BYSTROM, AS PROPERTY APPRAISER FOR DADE COUNTY, FLORIDA IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Whether this Court has certiorari jurisdiction under 28 U.S.C. § 1257(3) (1982) where:

A. The judgment below denying homestead tax exemption to Cuban/Haitian Entrants (status pending) is based on the separate, adequate and independent state ground of failure to meet the state constitutional and statutory requirement of intent to establish permanent residence in Florida; and

B. No federal question has been passed upon by the highest court of the state in which a decision could be had, and therefore no conflict on a question of federal law exists between the decision sought to be reviewed and decisions of this Court.

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STATEMENT OF THE CASE

Every person who has the legal or equitable title to real estate and maintains thereon as of January 1 the "*permanent* residence" of the owner, or another legally or naturally dependent upon the owner, qualifies under Florida law for homestead tax exemption.[1] This exempts from annual property tax $25,000 in assessed value of the homestead property.

Petitioners applied for homestead exemption of their residence for 1983. Their application was denied because of Petitioners' immigration status as Cuban/Haitian Entrants (status pending), aliens without permanent resident visas (PA-A27-28). This status precluded Petitioners from meeting the State constitutional and statutory requirement of declaring Florida their permanent residence. *Ibid.*

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[1] Art. VII, § 6(a), Fla. Const. (1980), provides in pertinent part:

> Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law.

Sec. 196.031(1), Fla. Stat. (1983), provides in pertinent part:

> Every person who has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his permanent residence, or the permanent residence of another or others legally or naturally dependent upon said person, shall be entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of $5,000 on the said residence and contiguous real property, as defined in § 6, Art. VII of the State Constitution.

Denial of homestead exemption was appealed by Petitioners to an administrative tribunal, the County Property Appraisal Adjustment Board (PA-A28). Through counsel, Petitioners filed affidavits describing their immigration status as Cuban/Haitian Entrants and asserted: "I have permission to remain in the United States on an *indefinite* basis. A bill is presently pending in the Congress of the United States which would allow me to obtain Permanent Resident Status" (PA-A24, ¶ 10, A26, ¶ 10). Documentation submitted to this Court by Petitioners demonstrates that their "Country of Permanent Residence" is Haiti (PA-A31).

An unabashedly sympathetic Special Master of the Property Appraisal Adjustment Board was constrained by *Matter of Cooke,* 412 So.2d 340 (Fla. 1982) to deny the petition for homestead exemption, stating: "Regardless of the Special Master's views on this issue, the Master is bound by this recent ruling from the Florida Supreme Court" (PA-A22).

Petitioners filed suit in state court, seeking a declaration that the decision of the Florida Supreme Court in *Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963) was unconstitutional and that Petitioners had been deprived of their right to homestead exemption from taxation in violation of the due process and equal protection clauses, the supremacy clause and the constitutional right to travel. Petitioners subsequently amended their complaint to delete the request that the trial court declare *Juarrero* unconstitutional.

The trial court dismissed Petitioners' amended complaint for failure to state a cause of action for homestead

exemption from ad valorem taxation. The trial judge concluded that Petitioners, as Cuban/Haitian Entrants (PA-A9, ¶ 4) lacking "permanent resident alien status" (PA-A15, ¶ 34) "are legally incapable of declaring a Florida home their permanent residence" *Liphete v. Stierheim* (PA-A6, ¶ 3).

Appeal of the trial court's dismissal of Petitioners' amended complaint was affirmed *per curiam* without opinion (PA-A4); *Liphete v. Stierheim,* 455 So.2d 1348 (Fla. 3d DCA 1984). The Florida Supreme Court dismissed Petitioners' appeal for lack of jurisdiction. The decision sought to be reviewed did not "*expressly* affect a class of constitutional or state officers", since it was a *per curiam* affirmance without opinion, and the Florida Supreme Court lacks jurisdiction to review such decisions. Art. V, § 3(b) (3), Fla.Const. (1980); Fla.R.App.P. 9.030(a) (2) (A) (iii).

The Petition to this Court for Writ of Certiorari to the Florida Third District Court of Appeal followed.

SUMMARY OF ARGUMENT

1. The State court decision sought to be reviewed is based on a separate, adequate and independent state ground. Therefore, the Petition for Writ of Certiorari should be denied.

2. The State court did not decide *any* federal question by its *per curiam* affirmance. *A fortiori,* the State court did not decide a federal question in a way in conflict with any decision of this Court. Therefore, the Petition for Writ of Certiorari should be denied.

REASONS FOR NOT GRANTING CERTIORARI

I.

No Federal Question Has Been Passed Upon In The Decision Denying State Homestead Tax Exemption To Cuban/Haitian Entrants (Status Pending).

II.

The Decision Below Denying To Cuban/Haitian Entrants (Status Pending) Who Are Parolees Temporarily Present In The United States The Homestead Tax Exemption Reserved Exclusively For Homeowners Who Have Established Permanent Residence In Florida Does Not Decide A Federal Question In Conflict With Decisions Of This Court.

III.

The Decision Below Denying To Cuban/Haitian Entrants (Status Pending) Who Are Parolees Temporarily Present In The United States The Homestead Tax Exemption Reserved Exclusively For Homeowners Who Have Established Permanent Residence In Florida Is Based On Separate, Adequate And Independent State Grounds.

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I.

No Federal Question Has Been Passed Upon In The Decision Denying State Homestead Tax Exemption To Cuban/Haitian Entrants (Status Pending).

Petitioners seek to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257 (1982), which provides in pertinent part as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

The recent pronouncement by this Court in *Illinois v. Gates,* — U.S. —, 103 S.Ct. 2317 (1983) reaffirmed that the Court has no jurisdiction under 28 U.S.C. § 1257(3) unless a federal question has been both raised and decided in the state court below, citing *Crowell v. Randell,* 10 Pet. 368, 391, 9 L.Ed. 458 (1836), *Owings v. Norwood's Lessee,* 5 Cranch. 344, 3 L.Ed. 120 (1809) and *McGoldrick v. Compagnie Generale Transatlantique,* 309 U.S. 430, 435-436 (1940).

The Third District Court of Appeal of Florida in the case *sub judice* issued a *per curiam* affirmance without opinion. The trial court had construed only the homestead provision of the Florida Constitution and applicable case law in deciding that Petitioners were "legally incapable of declaring a Florida home their permanent residence." *Liphete v. Stierheim* (PA-A5, 6). That "legal incapacity" precluded their stating a cause of action for homestead exemption and the amended complaint was dismissed. It is indisputable, therefore, that no federal question was decided or passed upon. Consequently, this Court lacks jurisdiction for review.

II.

The Decision Below Denying To Cuban/Haitian Entrants (Status Pending) Who Are Parolees Temporarily Present In The United States The Homestead Tax Exemption Reserved Exclusively For Homeowners Who Have Established Permanent Residence In Florida Does Not Decide A Federal Question In Conflict With Decisions Of This Court.

A. A Per Curiam Affirmance Without Opinion Does Not Furnish A Basis For Discerning Conflict With A Decision Of Any Other Court.

The decision of the Florida Third District Court of Appeal sought to be reviewed, *Liphete v. Stierheim,* 455 So.2d 1348 (Fla. 3d DCA 1984), states in its entirety: *"Per curiam.* Affirmed. *Alcime v. Bystrom,* 451 So.2d 1037 (Fla. 3d DCA 1984)" (PA-A4). Petitioners sought to appeal the *per curiam* affirmance without opinion by invoking the jurisdiction of the Florida Supreme Court under a provision vesting jurisdiction to review district court of appeal decisions *expressly* affecting a class of constitutional officers (here, property appraisers).

The Supreme Court of Florida dismissed the appeal based on a line of cases which hold that the Florida Supreme Court pursuant to art. V, § 3(b), Fla. Const. and Fla.R.App.P. 9.030(a)(2)(A), does not have jurisdiction to entertain appeals where the district court of appeal has issued only a *per curiam* affirmance without a written opinion. *Robles Del Mar, Inc. v. Town of Indian River Shores,* 385 So.2d 1371 (Fla. 1980); *Dodi Publishing Co. v. Editorial America, S.A.,* 385 So.2d 1369 (Fla. 1980); *Jenkins v. State,* 385 So.2d 1356 (Fla. 1980). The rationale

of this line of cases is that a decision cannot *"expressly* and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law", Fla.R.App.P. 9.030(a)(2)(A)(iv), or *"expressly* affect a class of constitutional or state officers", Fla.R.App.P. 9.030(a)(2)(A)(iii), where the decision "expresses" nothing whatsoever except approval of the trial court's decision and omits explanation of the question or questions upon which the appellate court's decision is based.

Since the decision sought to be reviewed is a *per curiam* affirmance without opinion, no conflict can exist with any decision of any other district court of appeal or the Florida Supreme Court. Following the same rationale, no conflict can be inferred between the *per curiam* affirmance without opinion and any decision of this Court. In the absence of any explanation by the lower court specifying that its decision turns on the resolution of a federal question, Petitioners' assertion that the Florida court has decided a federal question which conflicts with decisions of this Court is groundless and the petition for certiorari to Florida's Third District Court of Appeal should be denied.

B. The Decision Below Denying Homestead Exemption To Cuban/Haitian Entrants (Status Pending) Does Not Conflict With Toll v. Moreno, 458 U.S. 1 (1982) And Elkins v. Moreno, 435 U.S. 647 (1978), Since The District Court's Decision Is Based On A Determination Of Permanent Residence Vel Non And Not On Whether Applicants Are Aliens.

Florida requires permanent residence as a prerequisite to homestead exemption from residential property

taxation. Art. VII, § 6, Fla.Const.; § 196.031(1), Fla.Stat. *See* footnote 1, *ante* at 1. This requirement imposes a burden of added taxes on all owners of residential property who are not permanent residents of the State of Florida.

Permanent residents include both citizens and noncitizens of the United States. *Smith v. Voight,* 158 Fla. 366, 28 So.2d 426 (1946). Permanent resident aliens may qualify for homestead exemption, since their immigration status gives them the legal capacity to establish permanent residence in Florida. *See Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963).

Aliens whose immigration status does not permit them to remain permanently in the United States, however, are precluded as a matter of law from establishing a permanent residence in Florida. Consequently, they cannot qualify for homestead exemption. *Ibid.; Alcime v. Bystrom,* 451 So.2d 1037 (Fla. 3d DCA 1984).

An alien present in this country by virtue of no more than a tourist visa has no legal authority to reside permanently in Florida. Therefore, a tourist cannot qualify for Florida's homestead exemption. *Matter of Cooke,* 412 So.2d 340 (Fla. 1982).

To reside in this country permanently, an alien must have a permanent resident visa, must register as a resident alien and be in possession of an alien registration card at all times. 8 U.S.C. § 1304; 8 C.F.R. §211.1 (1982). It follows that an alien who does not hold a permanent resident visa cannot be a permanent resident of Florida, and regardless of what his intent is to do in the future, he is incapable of declaring a home in this State as his permanent residence unless his legal status is changed.

Since Petitioners are not registered as resident aliens and do not have permanent resident visas (PA-A13-14, ¶ 27), but are in this country merely as "parolees"[2] (PA-A9, ¶ 4) specifically designated Cuban/Haitian Entrants (status pending)[3] (*ibid.*, PA-A31, 32, A35-37, A39, A49,

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[2] The status of parolees is prescribed by § 182(d) (5) (A) of the Immigration and Naturalization Act, 8 U.S.C. § 1182(d) (5) (A) (1980), which provides:

> The Attorney General may, except as provided in subparagraph (B), in his discretion parole into the United States *temporarily* under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but *such parole of such alien shall not be regarded as an admission of the alien* and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States. (Emphasis supplied.)

[3] P.L. 96-422, § 501(e) defines "Cuban and Haitian entrant" as follows:

> (1) *any individual parole status as a Cuban/Haitian Entrant (Status Pending)* or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and
> (2) any other national of Cuba or Haiti—
>
> (A) who—
>
> (i) was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;
>
> (ii) is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(Continued on the next page)

A51-52), they do not have the legal ability to declare the property in question their permanent residence and therefore cannot avail themselves of homestead tax exemption benefits under art. VII, § 6, Fla. Const. (1980).

Not only aliens bear the burden of ineligibility for homestead exemption of owner-occupied residential property. Members of various classes of applicants are denied homestead tax exemption on the first $25,000 in assessed valuation of their Florida residences. Persons who are not permanent residents of the State do not qualify for this favorable tax treatment regardless of their citizenship or alienage. Denials are issued to permanent residents of other states, to aliens who lack permanent resident visas, and to all other applicants who cannot establish a permanent residence in Florida. Persons entitled to Florida homestead exemption include both alien and nonalien permanent residents of Florida. Thus, Florida has imposed an additional tax burden on all individuals sharing the common relevant characteristic of lack of permanent residence in the State. Only some of these persons are aliens. As a result, the facts *sub judice* are plainly distinguishable from those of *Elkins v. Moreno, supra,* and *Toll v. Moreno, supra,* where this Court emphasized:

> It is important to note that this case does not involve, and we express no views regarding, a State's imposition of a burden on all individuals sharing a

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(Continued from previous page)

(iii) has an application for asylum pending with the Immigration and Naturalization Service; and

(B) with respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

94 Stat. 1810 (Emphasis supplied).

> common relevant characteristic, *of whom only some are aliens.*

Toll, — U.S. —, 102 S.Ct., at 2986 n. 25 (Emphasis supplied).

Furthermore, the law of the case in *Elkins* and *Toll* is based on state law as construed by the Court of Appeals of Maryland. Before deciding whether the University of Maryland's denial of in-state tuition status to G-4 visaholders violated federal law, this Court certified to Maryland the question of whether state law prohibited G-4 visaholders from becoming domiciliaries of the State. Only after the Maryland court answered this state law question in the negative was it necessary for this Court to address a federal question.

The question concerning eligibility of non-resident aliens to homestead exemption was similarly certified by the Fifth Circuit Court of Appeals to the Florida Supreme Court. *See Matter of Cooke,* 643 F.2d 277 (5th Cir. 1981) (the certified question); 412 So.2d 340 (Fla. 1982) (Florida's answer); and 683 F.2d 130 (5th Cir. 1982) (adoption by the Fifth Circuit).

Unlike the University of Maryland, Respondents herein are following state law as construed by the highest court of the State. The issue of homestead tax exemption is a matter of Florida law: the State constitution and statutes require permanent residency for eligibility. Therefore, there is no conflict on a federal question between *Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963) or *Cooke, supra,* and any decision of this Court.

It follows from the foregoing that the decision of the Florida Third District Court of Appeal does not conflict

with *Elkins v. Moreno* or *Toll v. Moreno*. The Petition for Writ of Certiorari should be denied.

C. The Decision Below Denying Homestead Exemption To Petitioners Does Not Conflict With Vlandis v. Kline, 412 U.S. 441 (1973), Because Cuban/Haitian Entrants (Status Pending) Lack The Legal Capacity To Declare Florida Their Permanent Residence.

Petitioners complain that Florida has established an irrebuttable presumption that only aliens with permanent resident visas can establish permanent residence in Florida and thereby qualify for the homestead tax exemption reserved exclusively for permanent residents of the State (Pet. 16-18). For the purpose of this brief, Respondents assume *arguendo* the correctness of Petitioners' assertion.

Petitioners' immigration status is that of parolees (PA-A9, ¶ 4). The legal status of parolees is prescribed by § 182(d) (5) (A) of the *Immigration and Naturalization Act*, 8 U.S.C. § 1182(d) (5) (A). *See* footnote 2, *ante*, at 9.

Hence, Petitioners' parolee status contemplates their constructive custody by the Immigration and Naturalization Service, and permits continuing physical presence in the United States only *"temporarily"* so long as they remain parolees. *Ibid.* The Cuban/Haitian Entrant (status pending) designation emphasizes the temporary nature of Petitioners' right to remain physically in this country pending their admission, exclusion or deportation, as their individual claims for asylum, refuge or admission may warrant.

In *Leng May Ma v. Barber*, 357 U.S. 185 (1958), this Court discussed the status of parolee under the precursor of present § 182(d)(5)(A) of the Immigration and Naturalization Act. Congress specifically provided, then as now, that parole "'shall not be regarded as an admission of the alien.'" 357 U.S., at 187.

Petitioners' parolee status affords them no greater foothold in the United States than that of parolee Leng May Ma. Parolees are constructively in custody during the pendency of their claims for admission to the United States. Parole is equated with detention. As Mr. Justice Holmes explained:

> The appellant could not lawfully have landed in the United States . . ., and until she legally landed "could not have dwelt within the United States." Zartarian v. Billings, 204 U.S. 170, 175. Moreover while she was at Ellis Island she was to be regarded as stopped at the boundary line and kept there unless and until her right to enter should be declared. United States v. Ju Toy, 198 U.S. 253, 263. When her prison bounds were enlarged by committing her to the custody of the Hebrew Society, the nature of her stay within the territory was not changed. She was still in theory of law at the boundary line and had gained no foothold in the United States.

Kaplan v. Tod, 267 U.S. 228, 230 (1925), as quoted in *Leng May Ma*, 357 U.S., at 189.

By definition, parolees are persons present in the United States *"temporarily"*, 8 U.S.C. § 1182(d)(5)(A), *supra*, who have not established a right to be lawfully admitted into the United States. *Ibid.* Because of their immigration status, parolees are authorized to remain in the United States temporarily only during the processing of

their claims for admission. Parolees thus plainly lack the legal capacity to formulate the intent to reside permanently in this country. Cuban/Haitian Entrants (status pending), who have been provided no more than "temporary respite" (PA-A48-50, A51-53) subject to renewal for six months at a time (PA-A42) and pending determination of their status, have no greater claim to permanent residence than other parolees.

Article VII, § 6, Fla. Const. and § 196.031(1), Fla. Stat., explicitly require the intent to establish permanent residence as a *sine que non* to the establishment of a claim of homestead exemption. Because parolees lack the legal ability to form the requisite intent to reside permanently in the State of Florida, Petitioners are precluded as a matter of law from claiming homestead benefits in Florida.

III.

The Decision Below Denying To Cuban/Haitian Entrants (Status Pending) Who Are Parolees Temporarily Present In The United States The Homestead Tax Exemption Reserved Exclusively For Homeowners Who Have Established Permanent Residence In Florida Is Based On Separate, Adequate And Independent State Grounds.

This Court has consistently held that when a state court judgment is based on adequate and independent state grounds, even though a federal question may be involved, it will decline to accept jurisdiction. *See Fox Film Corp. v. Muller,* 296 U.S. 207 (1935); *Enterprise Irrigation District v. Farmers Mutual Canal Company,* 243 U.S. 157, 164 (1917). In fact, the Court in *Zacchini v. Scripps-Howard Broadcasting Co.,* 433 U.S. 562, 566 (1977) stated:

> If the judgment below rested on an independent and adequate state ground, the writ of certiorari should be dismissed as improvidently granted, *Wilson v. Loew's Inc.*, 355 U.S. 597, 78 S.Ct. 562, 2 L.Ed.2d 519 (1958), for "[o]ur only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." *Herb v. Pitcairn,* 324 U.S. 117, 125-126, 65 S.Ct. 459, 463, 89 L.Ed. 789 (1945).

In sustaining the decision of the trial court which denied the exemption to Petitioners, the district court of appeal cited *Alcime v. Bystrom,* 451 So.2d 1037 (Fla. 3d DCA 1984), a case involving the denial of homestead exemption to a Haitian alien without a permanent resident visa. *Alcime* includes a written opinion and cites two Florida Supreme Court cases as authority. The more recent case, *Matter of Cooke,* 412 So.2d 340 (Fla. 1982), cited with approval *Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963). The prevailing interpretation of § 196.012(16), (17) Fla.Stat. (1981) is that "an alien without a permanent visa . . . cannot . . . prove an intention to become a permanent resident of the state for homestead tax exemption purposes." *Alcime,* 451 So.2d at 1037.

Cooke went to the Florida Supreme Court as a certified question from the United States Court of Appeals, Fifth Circuit. The court decided that the question involving the disallowance of homestead exemption claimed by a debtor-tourist in bankruptcy proceedings was primarily a state concern. The Fifth Circuit then relied upon

the Florida Supreme Court's answer and held that "a tourist cannot legally formulate the intent to make his residence his family's permanent place of residence." *Matter of Cooke,* 683 F.2d 130 (5th Cir. 1982).

Cooke is important for two reasons: It recognizes that Florida homestead law is primarily a matter of state concern and that the statute as interpreted by the State supremacy clause of the supreme court requires the *legal* ability to formulate the intent to reside permanently in the State, something a tourist cannot do. Likewise, a Cuban/Haitian Entrant (status pending), paroled into the United States temporarily, cannot formulate the requisite intent. The Fifth Circuit also recognized that no federal question was involved even though the state statute affects aliens.

Not every state statute which in any way deals with aliens is *per se* pre-empted by the federal power under the constitution. *De Canas v. Bica,* 424 U.S. 351 (1976). *See also Florida Lime and Avocado Growers, Inc. v. Paul,* 373 U.S. 132 (1963) "'[T]he court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus *per se* pre-empted by [the federal government's] constitutional power . . . .'" *Toll v. Moreno,* — U.S. —, 102 S.Ct., at 2991 (Rehnquist, J., dissenting).

It is well settled that state laws denying aliens certain rights enjoyed by citizens are not invalid under the due process clause of the Fourteenth Amendment to the Federal Constitution where the denial of such rights to the aliens is not arbitrary and capricious or wholly unjustifiable. *Examining Board of Engineers, Architects & Surveyors v. DeOtero,* 426 U.S. 572 (1976); *Frick v. Webb,* 263 U.S. 326 (1923); *Webb v. O'Brien,* 263 U.S. 313 (1923);

Porterfield v. Webb, 263 U.S. 225 (1923); *Terrace v. Thompson*, 263 U.S. 197 (1923); *Crane v. New York*, 239 U.S. 195 (1915); *Heim v. McCall*, 239 U.S. 175 (1915); *Patsone v. Pennsylvania*, 232 U.S. 138 (1914).

This Court specifically held in *Osborne v. State of Florida*, 164 U.S. 650 (1897):

> The particular construction to be given to this state [tax] statute is a question for the state court to deal with, and in such a case as this we follow the construction given by the state court to the statutes of its own state.

Furthermore, if the Florida Supreme Court wanted to reconsider or recede from its earlier decision in *Juarrero*, it could have done so. Instead the court relied on *Juarrero* and quoted it with approbation in *Cooke*. Therefore, Petitioners' argument that the Florida Supreme Court has been denied the opportunity to reconsider its decision in *Juarrero* is without merit.

The determination of whether a taxpayer is within the ambit of a taxing statute is an independent and adequate state ground. As Mr. Justice Holmes explained in *Nickel v. Cole*, 256 U.S. 222 (1921):

> As there was state power to tax * * * the question whether or not the * * * interest [of the plaintiffs in error] under the circumstances was correctly subjected to the tax was purely a state question.

Id., at 226.

Petitioners' claim clearly is grounded in state law and the right they seek, homestead tax exemption, originates under state law.

All aliens without resident visas, as well as all other persons, alien and nonalien alike, who are not Florida

permanent residents, are denied homestead exemption in Florida. No particular group has been singled out for arbitrary, capricious or disparate treatment. Moreover, it is clearly within the purview of state courts to interpret and apply state statutes.

In *Elkins v. Moreno*, 435 U.S. 647, the Court held that while Congress "was willing to allow non-restricted non-immigrant aliens to adopt the United States as their domicile . . . [*w*]*hether such an adoption would confer domicile in a state would, of course, be a question to be decided by the State.*" *Id.*, at 666 (Emphasis supplied).

This Court specifically recognized that domicile was a potentially dispositive state question even where, unlike here, Congress had spoken and authorized permanent residence for certain aliens. It necessarily follows that the Florida prerequisite of permanent residency for homestead exemption is exclusively a matter of State law. Therefore this Court has no jurisdiction of Petitioners' claim.

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CONCLUSION

For the reasons stated and upon the authorities cited, the petition for writ of certiorari should be denied.

Respectfully submitted,

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